IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. AARON MICHAEL FALLON, Appellant.	No. 38995-9-II No. 38998-3-II (consolidated) UNPUBLISHED OPINION

Houghton, J. — Aaron Fallon appeals his conviction for forgery, arguing that insufficient evidence supports it. He also appeals his sentence, arguing that it exceeded the statutory maximum. We affirm.

FACTS

On March 1, 2008, Fallon visited a local Bank of America branch in an attempt to cash a $4,500 check from Goodway Technologies Corporation. The teller, Lia Johnson, became suspicious when she noticed the Goodway check did not look like others previously drawn on the account. Johnson and a manager verified the check using a special software program called "Image View," which allowed them to view other checks drawn on the account for comparison. Report of Proceedings (RP) at 291. The branch manager suspected that Goodway had not issued the check to Fallon and called the Clark County Sheriff's Office. When the police arrived, Fallon left.

Then early in the morning on June 17, Clark County sheriff's deputies responded to a suspected vehicle prowling. They found Fallon in the driver's seat and Michael Whittington in the front passenger seat of a Ford Explorer. One of the deputies became suspicious when he noticed various tools in the vehicle. The deputy ran the vehicle identification number and found that the owner had reported the vehicle stolen. The deputies arrested Fallon and Whittington and searched the vehicle. They found various checks, mail, and an unsigned social security card with Fallon's name on it.

By fourth amended information, the State charged Fallon with possession of a stolen motor vehicle, 12 counts of second degree identity theft, two counts of forgery, and second degree theft. RCW 9A.56.068; RCW 9.35.020; RCW 9A.60.020; RCW 9A.56.020(1)(a). A jury heard the matter and convicted him on all counts. The trial court sentenced him to 57 months' confinement plus 9 to 18 months' community custody on the forgery charge stemming from the Goodway check. He appeals this conviction and sentence.[1]

ANALYSIS

Sufficiency of the Evidence

Fallon first contends that the State failed to prove beyond a reasonable doubt that he committed forgery. Evidence is sufficient to support a jury's verdict if, viewed in the light most favorable to the State, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). An insufficiency claim admits the truth of the evidence and reasonable inferences. *Salinas*, 119

[1] The only conviction at issue in this appeal is the Goodway check forgery conviction.

Wn.2d at 201. We consider circumstantial and direct evidence equally reliable. *State v. Delmarter*, 94 Wn.2d 634, 638, 618 P.2d 99 (1980). In determining whether the necessary quantum of proof exists, we need not be convinced of the defendant's guilt beyond a reasonable doubt but only that substantial evidence supports the State's case. *State v. Jones*, 93 Wn. App. 166, 176, 968 P.2d 888 (1998). Substantial evidence is evidence that " 'would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed.' " *State v. Unga*, 165 Wn.2d 95, 120 n.12, 196 P.3d 645 (2008) (Sanders, J., concurring) (quoting *State v. Davis*, 73 Wn.2d 271, 283, 438 P.2d 185 (1968)).

"A person is guilty of forgery if, with intent to injure or defraud: (a) He falsely makes, completes, or alters a written instrument; or (b) He possesses, utters, offers, disposes of, or puts off as true a written instrument which he knows to be forged." RCW 9A.60.020(1). The forgery intent requirement "may be inferred from surrounding facts and circumstances if they 'plainly indicate such an intent as a matter of logical probability.' " *State v. Esquivel*, 71 Wn. App. 868, 871, 863 P.2d 113 (1993) (quoting *State v. Woods*, 63 Wn. App. 588, 591, 821 P.2d 1235 (1991)). And even the unexplained possession of a forged instrument is strong evidence of guilt. *Esquivel*, 71 Wn. App. at 871.

Fallon asserts that there is no evidence that the Goodway check was in fact forged or that the check was anything other than what it was purported to be. He asserts that Bank of America did not contact Goodway to confirm the bank's suspicions and that a Goodway representative did not testify at his trial. Fallon cites *State v. Hiser*, 51 Wn.2d 282, 283, 317 P.2d 1072 (1957), for the proposition that lack of proof that an instrument is forged cannot be filled by suspicion,

speculation, or surmise.

Here, more than suspicion, speculation, or surmise exists in the record to substantiate Fallon's forgery conviction. The State called Johnson, the Bank of America teller to whom Fallon presented the Goodway check. Johnson testified at length about how the check did not look like other Goodway checks and that she and a manager used the Image View software to confirm this. Fallon testified that he received the check from a friend of a friend he could only identify as "Ralph." RP at 403. He even acknowledged that he did not have any relationship with Goodway and that he did not receive the check from a Goodway representative. In addition, Fallon abruptly left the bank branch without the check once he realized police had arrived. *See State v. Bruton*, 66 Wn.2d 111, 112-13, 401 P.2d 340 (1965) (evidence of flight following commission of a crime is admissible along with other circumstances in determining guilt or innocence).

When drawing all reasonable inferences from this evidence in the light most favorable to the State, sufficient evidence supports the conviction. Fallon's argument fails.

Indeterminate Sentence

Fallon also contends that his sentence is indeterminate and exceeds the statutory maximum. We review questions of law de novo. *State v. Miller*, 156 Wn.2d 23, 27, 123 P.3d 827 (2005).

The trial court sentenced Fallon to 57 months' confinement plus 9 to 18 months' community custody. The statutory maximum for forgery is 60 months. RCW 9A.20.021(1)(c). The trial court's judgment and sentence, however, also states that "[t]he combined total amount of confinement and Community Placement or Community Custody shall not exceed the statutory

maximum." Clerk's Papers at 164.

Fallon cites *State v. Linerud*, 147 Wn. App. 944, 197 P.3d 1224 (2008), for the proposition that such a sentence is indeterminate. In *Linerud*, Division One held that "a sentence is indeterminate when it puts the burden on the [Department of Corrections] rather than the sentencing court to ensure the inmate does not serve more than the statutory maximum." 147 Wn. App. at 948. But Fallon's citation to *Linerud* is misguided because our Supreme Court remanded it in light of its recent holding in *In re the Personal Restraint of Brooks*, 166 Wn.2d 664, 211 P.3d 1023 (2009).

In *Brooks*, the court held that a sentence is not indeterminate when it states that the combination of confinement and community custody shall not exceed the statutory maximum. 166 Wn.2d at 675. The trial court here did exactly this when it set forth that Fallon's total custody should not exceed the statutory maximum. Thus, Fallon's argument fails.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

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Houghton, J.

We concur:

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Van Deren, C.J.

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Penoyar, J.